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STATE OF HARYANA

v.

JANAK SINGH AND OTHERS

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SUPREME COURT, INDIA
(2013) 9 SUPREME COURT CASES 431
GS SINGHVI J
RANJANA P DESAI J
[CRIMINAL APPEAL NO: 792-93 OF 2013†]

C

10 MAY 2013

CRIMINAL LAW: *Penal Code, 1860 - Section 376(1) proviso - Rape - Sentence - Reduction of, to below statutorily prescribed minimum period of 7 yrs - Court must assign adequate and special reasons indicating*

D

extenuating circumstances - "Adequate and special reasons" - What are - Strict compliance with proviso needed - Sentence bargaining not permissible - "Just and expedient" is not the same as "adequate and special reasons"

E

Accused convicted under s. 376 and sentenced to 8 yrs' RI by trial court - In appeal before High Court, defence counsel made concession that accused not challenging conviction on merits but sought reduction of sentence to period of imprisonment already undergone by accused - High Court, taking notice of defence

F

counsel's submission that accused had already undergone more than 2 yrs' RI, was only bread earner of his family and was facing criminal proceedings for long and that circumstances and medical evidence indicated prosecutrix's consent, held that it was just and expedient to reduce sentence to period of imprisonment already undergone

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Held, High Court not justified in reducing sentence below prescribed minimum period, to 2 yrs' RI already undergone by A-1 convicted for rape and sentenced to 8 yrs' RI by trial court and to one year's RI already undergone by A-2 convicted for attempt

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to rape and sentenced to 4 yrs' RI by trial court - High Court should have considered whether concession made by accused was proper as it had duty to see legality of conviction - Once accused did not press the appeal and High Court was convinced that

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† Arising out of SLPs (Crl.) Nos. 9544-45 of 2011. From the Judgment and Order dated 2-8-2010 of the High Court of Judicature of Punjab and Haryana at Chandigarh in Crl. As. Nos. 648-SB and 811-SB of 2000

conviction must stand, it could reduce sentence below prescribed minimum only by assigning "adequate and special reasons" indicating extenuating circumstances - High Court could not have reduced sentence below statutory minimum merely because it thought that it was "just and expedient" to do so - Appeals remanded to High Court for disposal afresh

WORDS AND PHRASES: *"Adequate and special reasons", "just and expedient" - Held, are not the same - Criminal trial - Sentence - Minimum sentence/Minimum statutory sentence*

CRIMINAL LAW: *Penal Code, 1860 - Sections 375 and 376 - Rape - Violative of victim's right under Art. 21 of the Constitution - It violates victim's dignity and honour and shatters her personality and confidence level - These aspects must be kept in mind by court while dealing with rape cases - Constitution of India - Art. 21 - Crimes Against Women and Children - Rape*

Partly allowing the appeals, the Supreme Court

Held:

Rape is one of the most heinous crimes committed against a woman. It insults womanhood. It violates the dignity of a woman and erodes her honour. It dwarfs her personality and reduces her confidence level. It violates her right to life guaranteed under Article 21 of the Constitution of India. Rape cases have to be dealt with keeping these observations in mind. (Para 7)

Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490 : 1996 SCC (Cri) 133, relied on.

Section 376(1) IPC provides a minimum of 7 years' sentence for rape and the proviso thereto makes it clear that for any reduction from the minimum sentence of seven years, adequate and special reasons have to be assigned in the judgment. Therefore, the courts must strictly abide by this legislative command. Section 376(1) read with the proviso reflects the anxiety of the legislature to ensure that a rapist is not lightly let off and unless there are some extenuating circumstances stated in writing, sentence below the minimum i.e. less than seven years cannot be imposed. While imposing sentence on persons convicted of rape, the court must be careful and must not overlook requirement of assigning reasons for imposing sentence below the prescribed minimum sentence. The High Court appears to have not noticed this requirement. (Para 8)

A *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75 : 2000 SCC (Cri) 755
State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230 : 1995 SCC (Cri) 1097, relied on.

B It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High C Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not D have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it E was "just and expedient" to do so. These are not the reasons contemplated by the proviso to Section 376(1) IPC. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, F such a course would be against the mandate of Section 376(1) IPC. (Paras 12 and 13)

Janak Singh v. State of Haryana, Criminal Appeal No. 648-SB of 2000, decided on 2-8-2010 (P&H), reversed.

G R-D/51884/CR

Advocates who appeared in this case:

For the appellant - Narender Hooda, Senior Additional Advocate General (Dr Monika Gusain, Advocate)

H *For the respondents - Kapil Arora, Ms Dharitry Phookan and Vikrant Rana, Advocates*

Chronological list of cases cited on page(s)

Janak Singh v. State of Haryana, Criminal Appeal No. 648-SB of 2000, decided on 2-8-2010 (P&H) (reversed)

I *State of Karnataka v. Krishnappa, (2000) 4 SCC 75 : 2000 SCC (Cri) 755*

Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490 : 1996 SCC (Cri) 133

State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230 : 1995 SCC (Cri) 1097

JUDGMENT

Ranjana P Desai J:

[1] Leave granted. In these appeals by special leave the State of Haryana has challenged the judgment and order dated 2-8-2010[1] passed by the High Court of Punjab and Haryana maintaining the conviction of respondent, Joginder Singh (original Accused 1) under Sections 376 and 506 of the Penal Code, 1860 (for short "IPC") and conviction of respondent, Janak Singh (original Accused 2) under Section 376 read with Section 511 and Section 506 IPC and reducing their sentence for the said offences to the sentence already undergone by them.

[2] According to the prosecution the prosecutrix lodged an FIR on 31-10-1998 at Police Post Jalmana stating that she was residing in the dera of Shekhupura along with her brother, Gurpreet Singh and mother, Joginder Kaur. On 27-10-1998 she, her mother Joginder Kaur and brother Gurpreet Singh were sleeping in the dera. At about 11.00 p.m. she got up for easing herself. After unbolting the room she went to the courtyard. She found that two men i.e. respondent Joginder Singh and respondent Janak Singh were standing near the boundary of the courtyard. One of them was having a khes and another was having a piece of cloth on his head. They lifted her and threatened to kill her in case she raised cries. They took her to a field of maize where respondent Joginder Singh raped her. Respondent Janak Singh also tried to catch hold of her to rape her, but, since she cried for help her mother Joginder Kaur came there and on seeing her both the accused fled away towards the fields. On the basis of this FIR, offences under Sections 376/506/511 IPC were registered against both the respondents. Investigation commenced. On completion of the investigation, respondent Joginder Singh was charged under Sections 376 and 506 IPC while respondent Janak Singh was charged under Sections 376, 511 and 506 IPC.

[3] Both the respondents pleaded not guilty to the charge and claimed to be tried. According to respondent Joginder Singh he had a love affair with the prosecutrix. However, he was married by his parents to a woman from their community and hence the prosecutrix and her mother were nursing a grudge against him.

1. *Janak Singh v. State of Haryana*, Criminal Appeal No. 648-SB of 2000, decided on 2-8-2010 (P&H)

A Therefore, he has been falsely implicated in this case. He also contended that he had advanced money to the mother of the prosecutrix. When he asked her to return the amount the prosecutrix and her mother were annoyed. This was also the reason why he was falsely implicated in this case. In support of
B his case he produced certain photographs showing the prosecutrix standing near him. Respondent Janak Singh stated that he had been falsely implicated in this case.

[4] The respondents examined DW1, Kashmiri Lal and placed
C reliance on photographs, Ext. DA and Ext. DB and negatives thereof being Ext. DC and Ext. DD. The prosecution, in support of its case, examined nine witnesses. The prosecution heavily relied on the evidence of PW2, the prosecutrix. After considering the evidence on record the learned Sessions Judge convicted
D respondent Joginder Singh for offence punishable under Section 376 IPC and sentenced him to undergo rigorous imprisonment for eight years and a fine of Rs 2000, in default of payment of fine, to further undergo rigorous imprisonment for two months. He was also convicted under Section 506 IPC and sentenced to undergo
E rigorous imprisonment for one year. Respondent Janak Singh was convicted under Section 376 read with Section 511 IPC and sentenced to undergo rigorous imprisonment for four years and a fine of Rs 1000, in default of payment of fine, to further undergo rigorous imprisonment for one month. He was also convicted
F under Section 506 IPC and sentenced to undergo rigorous imprisonment of one year. The substantive sentences were ordered to run concurrently.

[5] Both the respondents filed appeals in the High Court. We
G are rather surprised at the manner in which the High Court disposed of the appeals. After narrating the gist of the prosecution story the High Court noted the submission of the learned counsel for the respondents that respondent Joginder Singh had undergone more than two years of actual sentence and respondent Janak
H Singh had undergone one year, ten months and seven days of actual sentence; that the respondents are the only bread earners of their family and are facing criminal proceedings since the year 1998 and that in the facts and circumstances of the case and considering the medical evidence the possibility of the prosecutrix
I going with respondent Joginder Singh out of her own free will cannot be ruled out. The counsel appears to have made it clear

that the respondents had not challenged their conviction but they wanted their sentence to be reduced to the sentence already undergone. The State counsel made a feeble attempt to oppose this submission by stating that the sentence is not liable to be reduced. There is no indication in the impugned judgment[1] that the State counsel vehemently opposed the submission of the counsel for the respondents.

[6] The High Court after referring to the submissions of the counsel observed as under:

> After hearing the learned counsel for the parties and going through the record of the case, it would be just and expedient to reduce the sentence qua imprisonment of the appellants to already undergone by them. Fine is stated to have already been deposited by the appellants.
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> Accordingly, the conviction of appellant Joginder Singh under Sections 376, 506 IPC and the conviction of appellant Janak Singh under Sections 376/511 and 506 IPC, as ordered by the trial court, is maintained. However, sentence qua imprisonment of the appellants is reduced to already undergone by them.
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> The present appeals stand disposed of accordingly.

The High Court gave no reasons for reducing the sentence to sentence already undergone.

[7] Rape is one of the most heinous crimes committed against a woman. It insults womanhood. It violates the dignity of a woman and erodes her honour. It dwarfs her personality and reduces her confidence level. It violates her right to life guaranteed under Article 21 of the Constitution of India. We may remind ourselves of the observations made by this Court in *Bodhisattwa Gautam v. Subhra Chakraborty*[2] that rape is violative of the victim's most cherished of the fundamental rights guaranteed under Article 21 of the Constitution of India. In a series of judgments this Court has reiterated these observations. Rape cases have to be dealt with keeping these observations in mind.

1. *Janak Singh v. State of Haryana*, Criminal Appeal No. 648-SB of 2000, decided on 2-8-2010 (P&H)
2. (1996) 1 SCC 490 : 1996 SCC (Cri) 133

A **[8]** Section 376 IPC provides for punishment for rape. Offence of rape is punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years. The convict shall also be liable to fine. Proviso to Section 376(1) states that
B the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. Thus, a minimum of seven years' sentence is provided under Section 376(1) IPC. Sentence for a term of less than seven years can be imposed by a court only after assigning
C adequate and special reasons for such reduction. Thus, ordinarily sentence for an offence of rape shall not be less than seven years. When the legislature provides for a minimum sentence and makes it clear that for any reduction from the minimum sentence of seven years, adequate and special reasons have to be assigned in the
D judgment, the courts must strictly abide by this legislative command. Section 376(1) read with the proviso thereto reflects the anxiety of the legislature to ensure that a rapist is not lightly let off and unless there are some extenuating circumstances stated in writing, sentence below the minimum i.e. less than seven years
E cannot be imposed. While imposing sentence on persons convicted of rape, the court must be careful and must not overlook requirement of assigning reasons for imposing sentence below the prescribed minimum sentence. The High Court appears to have not noticed this requirement.

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[9] In this connection we may usefully refer to State of *Karnataka v. Krishnappa*[3]. In that case the High Court had reduced the sentence of ten years' rigorous imprisonment imposed by the trial court on the accused for an offence under Section
G 376 IPC to four years' rigorous imprisonment. Severely commenting on this indiscretion, this Court observed as under: (SCC p. 77d-g)

> Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an
H appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous

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3. (2000) 4 SCC 75 : 2000 SCC (Cri) 755

> crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. The courts are expected to properly operate the sentencing system and to impose such sentence for a proved offence, which may serve as a deterrent for the commission of like offences by others. Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity—it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised Judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

[10] In State of *A.P. v. Bodem Sundara Rao*[4] the accused was sentenced by the trial court for an offence under Section 376 IPC for ten years. The High Court maintained the conviction, however, reduced the period of sentence to four years. This Court set aside the High Court's order and enhanced the sentence to seven years which is the minimum prescribed sentence under Section 376 IPC. The relevant observations of this Court are as under: (SCC p. 232, para 9)

> 9. In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of

4. (1995) 6 SCC 230 : 1995 SCC (Cri) 1097

A punishment. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 year old girl shakes our judicial conscience. The offence was
B inhumane. There are no extenuating or mitigating circumstances available on the record which may justify imposition of sentence less than the minimum prescribed by the legislature under Section 376(1) of the Act.

[11] The above observations of this Court made in *Krishnappa*[3]
C and in *Bodem Sundara Rao*[4] state what should be the approach of the courts while sentencing the accused convicted of rape. We shall examine the present case in light of the above discussion.

[12] We notice that before the High Court the learned counsel
D for the respondents did not challenge the conviction. At the same time, he stated that the circumstances of the case and medical evidence indicated that this could be a case where the prosecutrix had gone with respondent Joginder Singh of her own will. Therefore, it is not clear whether the respondents had really
E instructed their counsel not to press the appeal on merits or whether the counsel on his own thought that getting the respondents released on sentence already undergone by them was an easy way out and, therefore, he preferred that option. We feel that the appeals were heard in a slipshod manner. It was open
F for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still
G consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced
H the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The

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I 3. *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75 : 2000 SCC
4. (1995) 6 SCC 230 : 1995 SCC (Cri) 1097

High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it was "just and expedient" to do so. These are not the reasons contemplated by the proviso to Section 376(1) IPC. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, at the cost of repetition, it must be stated that such a course would be against the mandate of Section 376(1) IPC.

[13] In view of the above discussion, we hold that the impugned judgment[1] is legally unsustainable and is liable to be set aside and the matter deserves to be remanded to the High Court for fresh disposal of the appeals filed by the respondents.

[14] In the result, the appeals are partly allowed, the impugned judgment[1] is set aside and the matter is remanded to the High Court with the request to dispose of the appeals filed by the respondents expeditiously after giving opportunity of hearing to all the parties. In the peculiar facts of the case, we direct that the respondents shall continue to remain on bail till the disposal of the appeals. It is made clear that nothing said in this order should be treated as expression of our opinion on the merits of the case.

1. *Janak Singh v. State of Haryana*, Criminal Appeal No. 648-SB of 2000, decided on 2-8-2010 (P&H) (Cri) 755